

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

FILED
NOV - 2 2005
U. S. DISTRICT COURT
E. DIST. OF MO.
ST. LOUIS

MISSOURI COALITION FOR
THE ENVIRONMENT FOUNDATION,
a non-profit corporation

Plaintiff,

v.

U.S. ARMY CORPS OF
ENGINEERS,

Defendant.

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05CV02039FRB

Civil No:

COMPLAINT

INTRODUCTION

1. On April 25, 2005, Plaintiff Missouri Coalition for the Environment Foundation ("Coalition") submitted a request for records to the U.S. Army Corps of Engineers ("Corps") pursuant to the Freedom of Information Act ("FOIA"). The request sought information pertaining to a large-scale flood frequency study that will have significant implications for management of the Missouri, Mississippi and Illinois rivers and their floodplains.

2. Plaintiff has repeatedly encouraged the Corps to respond to this FOIA request over the past six months, and has repeatedly been promised that a response would be forthcoming. To date, the Corps has neither provided a written response to the request nor produced any of the sought after information. FOIA requires that agencies provide a

response to requests for information within 20 business days and produce the requested information "promptly" thereafter.

3. This is an action under the FOIA, 5 U.S.C. § 552 *et seq.*, for injunctive and other appropriate relief to bring about the immediate processing and release of agency records requested by the Coalition from the Corps.

JURISDICTION AND VENUE

4. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 5 U.S.C. § 702 and 28 U.S.C. § 1331(a).

5. Venue is proper in this Court under 5 U.S.C. § 552(a)(4)(B). Plaintiff has its principal place of business within the jurisdictional boundary of the U.S. District Court for the Eastern District of Missouri.

PARTIES

6. Plaintiff Missouri Coalition for the Environment Foundation is a non-profit corporation incorporated under the laws of the State of Missouri with its principal office at 6267 Delmar Boulevard, Suite 2-E, University City, Missouri 63130.

7. The Coalition is a membership organization with the purposes of preserving and enhancing the scenic, scientific, educational, historical, wilderness, wildlife, open space, outdoor recreation and public health values of the physical environment, and coordinating, encouraging, and assisting efforts of others to maintain and enhance environmental quality.

8. These above mentioned interests of the Coalition, as well as the interests of its members, have been and will continue to be adversely affected by the Corps' failure

to comply with FOIA and its shielding of important information concerning management of the Missouri, Mississippi and Illinois rivers from public scrutiny.

9. Defendant U.S. Army Corps of Engineers is an agency of the United States government.

STATEMENT OF FACTS

10. The Coalition submitted a FOIA request to the Corps on April 25, 2005.
Exh. A.

11. The Coalition's FOIA request sought three categories of information relating to a large scale flood study conducted by the Corps on the Mississippi, Missouri and Illinois rivers.

12. The flood study's conclusions, if adopted by the Corps and other agencies, will have significant implications for the management of these three rivers and their floodplains. There has been significant controversy over the accuracy of the study's conclusions.

13. On June 1, 2005, an employee of the Coalition contacted the Corps' Rock Island District to inquire about the status of the FOIA request. The Corps employee in charge of responding to the FOIA request stated that some of the responsive information would be provided "next week."

14. On June 22, 2005, an employee of the Coalition contacted the Corps employee in charge of responding to the FOIA request. The Corps employee stated that he was then preparing a written response to the FOIA request and that some of the responsive information would be provided on June 23, 2005, or at least by the end of that week.

15. On August 25, 2005, the Coalition sent a letter to the Corps employee in charge of responding to the FOIA request, which reiterated that the Coalition had not received any responsive information. The letter also indicated that the Coalition would pursue legal remedies if the Corps' non-compliance continued.

16. On August 29, 2005, the Corps employee telephoned the Coalition employee and stated that responsive information would be provided within two weeks.

17. As of the date of this Complaint, the Corps has not provided either a written response to the Coalition's FOIA request or produced any of the sought after information.

CLAIM FOR RELIEF

(Violation of FOIA)

18. Plaintiff repeats and realleges paragraphs 1 through 17 above.

19. The FOIA provides that agencies shall respond to FOIA requests within twenty business days, 5 U.S.C. § 552(a)(6)(A)(i), and shall thereafter produce requested records "promptly." Id. § 552(a)(6)(C)(i).

20. The FOIA provides for judicial review of an agency's failure to provide records in response to a request made under that statute. 5 U.S.C. § 552(a)(4)(B).

21. The Corps' failure to produce the records responsive to the Coalition's FOIA request violates the FOIA.

REQUESTED RELIEF

WHEREFORE, Plaintiff prays that this Court:

- 1) order defendant immediately and expeditiously to process the Coalition's FOIA request and to produce the requested records;

- 2) award the Coalition its costs and reasonable attorneys fees incurred in this action; and
- 3) grant such other relief as the Court may deem just and proper.

Respectfully submitted,

By:

A handwritten signature in black ink, appearing to be 'E. Heisel', written over a horizontal line.

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